IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION APPLICATION NO. 172 OF 2006

M/s Unique Construction Corporation .. Applicant

V/s

MIDC, Maharashtra State & Anr. .. Respondents

Mr.Vikas R. Hukmani for the Applicant.

Mr.P.P. Chavan i/b Little & Co. for the Respondents.

CORAM : H.L. GOKHALE, ACG. CJ.

DATE : 2ND MARCH 2007

P.C. :

1. Heard Mr.Hukmani for the Applicant and Mr.Chavan for the Respondents.

2. The Applicant is seeking arbitration on the basis of clause 31 of the Agreement between the parties. This clause reads as follows:-

> "**31. Decision of Superintending Engineer to be Final**: Except where otherwise specified in the contract and subject to the powers delegate to him by MIDC under the Code Rules then in

force the decision of the Suptd Engineer of the circle for the time being shall be final conclusive and binding on all parties in the contract upon all questions relating to the meaning of the specifications designs drawings instructions hereinbefore mentioned and as to quality of workmanship or materials used on the work or as to other question claim right matter or thing whatsoever if any way arising out of or relating to the contract designs drawings specifications estimates instructions orders or these conditions or otherwise concerning the works or the execution or failure to execute the same whether arising during the progress of work or after the completion or abandonment thereof."

3. An identical clause has been interpreted by the Apex Court as not to mean an arbitration clause in State of U.P. v. Tippur Chand - 1980 (2) SCC 341, State of Orissa v. Damodar Das - (1996) 2 SCC 216 and Bharat Bhushan Bansal v. U.P. Small Industries Corporation Ltd. - AIR 1999 SC 899. Same clause in another matter was therefore interpreted by this Court as not to mean an arbitration. This was in Arbitration Application No.103 of 2006 decided on 19th January 2007 between another party and the Respondents herein.

4. This being the position, there is no occasion to refer the dispute to arbitration. Petition is therefore dismissed.

5. Mr.Hukmani makes a request that the Respondents ought to examine the claims of the Applicant appropriately and they have been pending for a long time. We expect the Respondents to look into the representation when made though of course in accordance with law.

ACTING CHIEF JUSTICE